

Transactions for the licensing of computer software may not be subject to ROT if the transaction agreements contain all the criteria set out in 86 Ill. Adm. code 130.1935(a)(1). (This is a PLR).

June 20, 2002

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see <http://www.revenue.state.il.us/legalinformation/regs/part1200>), is in response to your letter of May 16, 2002. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of Section 1200.110 (see <http://www.revenue.state.il.us/Laws/regs/part1200/>) appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to AAA for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither AAA nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

The purpose of this letter is to request a private letter ruling (PLR) from the Illinois Department of Revenue ('DOR') for AAA, an Illinois corporation. AAA respectfully requests a ruling to confirm that transfers of software pursuant to software licenses granted under AAA's current software license agreement are not taxable retail sales under the Illinois Retailer's Occupation {86 Ill. Adm. Code 130.1935(a)(1)}. This matter is not under audit or in litigation. No similar request has ever been submitted by AAA. I am unaware of any authority contrary to the position stated in this request.

I am a Vice President of AAA, an officer of AAA, a member of AAA's Board of Directors, and Secretary of the corporation. I am the person responsible for licensing and contracting issues at AAA, as well as sales tax issues. I am legally empowered to sign contracts for AAA.

Several potential customers in Illinois have asked us to obtain a PLR to verify that the software they license from AAA is not subject to sales tax. This is the primary business reason motivating this request.

The PLR would apply to our current software license agreement (SLA), which was created in March 2002, and I am hoping that the PLR would remain effective until such a time when AAA changes or modifies the SLA.

AAA also requests that the Illinois Department of Revenue omit any references to the following from any publicly disseminated version of this PLR:

NAME/ADDRESS

Background

AAA is an Illinois corporation that develops and markets computer-based training courses, which are online tutorials that teach people how to use software. As an online tutorial, the courses themselves are in fact software. The majority of our revenue derives from sales of software licenses to large businesses and organizations. The business transactions pertinent to this PLR-request involve a signed software license agreement (SLA).

It should be noted that sales which do not involve a signed SLA, such as the sale of shrink-wrapped versions of AAA products to individual consumers, are indeed subject to sales tax in Illinois. This PLR request does not apply to these shrink-wrapped transactions, only to transactions involving a signed SLA as described below.

Material Facts

A copy of the SLA is attached to this document. The SLA is a four-page document, including a one-page attachment (Attachment A). The first three pages of the SLA describe the general licensing terms (i.e. the terms that apply to all customers), while Attachment A lists information that is specific to a customer (specifically, the products being licensed, the size of the license in terms of users, and the licensing fee).

The discussion below demonstrates how this SLA meets all of the criteria provided in Section 130.1935(a)(1).

(A) It is evidenced by a written agreement signed by the licensor and the customer

A copy of the SLA is attached. Page 3 is the signature page, and signatures from both parties are required for the license to be granted.

(B) It restricts the customer's duplication and use of the software

Page 1, Section 3 RESTRICTIONS ON USE of the SLA restricts the customers duplication, distribution and usage of the software.

(C) It prohibits the customer from licensing, sublicensing or transferring the software to a third party (except to a related party) without the permission and continued control of the licensor

Page 2, Section 4 TRANSFER of the SLA prohibits the customer from transferring the software to any third party.

Page 1, Section 3 RESTRICTIONS ON USE of the SLA states that 'Licensee may not sublicense, rent, lease, distribute or assign the Software Products.'

(D) The licensor has a policy of providing another copy at minimal or no charge if the customer loses or damages the software, or permitting the licensee to make and keep an archival copy, and such policy is either stated in the license agreement, supported by licensor's books and records, or supported by a notarized statement made under penalties of perjury by the licensor

Page 2, Section 6. REPLACEMENT COPIES of the SLA states that 'The Software Products are provided to Licensee on a single master CD-ROM. Licensee will use the master CD-ROM to install, copy and/or deploy the Software Products within its organization, and Licensee may make backup copies of the master CD-ROM. In the unlikely event that Licensee has not made a backup copy or cannot retrieve the backup copy, the Licensee may obtain a replacement copy of the master CD-ROM from AAA for a Ten Dollar (US Dollars) replacement fee. Licensee will pay for the shipping expenses to send the replacement CD-ROM to the Licensee.'

The \$10 replacement fee reflects AAA's cost of producing a CD-ROM with the specific Software Products ordered by the customer. It should be noted that all sales involving the SLA will exceed a dollar value of \$1000, therefore a \$10 replacement fee can indeed be considered 'minimal.'

(E) The customer must destroy or return all copies of the software to the licensor at the end of the license period. This provision is deemed to be met, in the case of a perpetual license, without being set forth in the license agreement.

Page 3, Section 9. TERM of the SLA states that 'This License Agreement is effective until terminated. Licensee may terminate at any time by either destroying all copies of the Software Products or returning them to AAA. It will terminate automatically if Licensee fails to comply with any term or condition of the License Agreement. Upon such termination, Licensee agrees to destroy all copies of Software Products or return all copies of the Software Products to AAA.'

Therefore, the license is a perpetual license, but one that can be terminated by the Licensee, either voluntarily or by the Licensee's failure to comply with the terms of the SLA. In the event of termination, all copies of the software must be destroyed or returned to the licensor (AAA).

Your prompt response to this letter will be greatly appreciated. If you have any questions or need additional information, please contact me. If there is some problem with the SLA that prevents you from issuing the PLR, then please inform us so that we can amend the SLA and resubmit our request.

In general, gross receipts vendors receive from computer software licenses are subject to Retailers' Occupation Tax, unless the license agreements contain certain conditions. Licenses of software may not be subject to tax if the licenses meet all the criteria set out in 86 Ill. Adm. Code 130.1935(a)(1)(A-E). You have accurately set out these requirements in your letter.

We have examined the software license agreement (SLA) that you appended to your letter. We conclude that the provisions in the SLA that you cite meet the five required conditions of Section 130.1935(a)(1). Therefore your SLA qualifies as a licensing agreement that is not subject to tax.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the

Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.revenue.state.il.us or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Karl W. Betz
Associate Counsel

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